

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9551
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her "Reach-up" funding for the purchase of a typewriter for her use as a secretarial student. The issue is whether this denial is within the discretion of the department in its administration of the Reach-up program.

FINDINGS OF FACT

The petitioner is a recipient of ANFC. In Fall, 1988, she enrolled full time at a local community college in courses leading to an associates degree in secretarial science. She applied for and was granted Reach-up funding for some school supplies and expenses. However, the department denied her request for the purchase of a typewriter that she needed for her course work.

At first, the district office's Reach-up staff was able to loan the petitioner a typewriter belonging to the department. This machine broke down, however, and in September, 1989, the petitioner again requested Reach-up funding for a typewriter.

In October, 1989, the department implemented a state-wide "policy" that Reach-up funds would no longer be used to

purchase typewriters for secretarial students. The petitioner has struggled through her courses since that time by using typewriters at the library. This has created a considerable inconvenience in terms of time and frustration since the petitioner must make arrangements to be gone from her home even more and must conform her study schedule to the hours the library is open.

The department admits that prior to October, 1989, it frequently used Reach-up funds for typewriter purchases for students like the petitioner. The department also admits that Reach-up funding is still available for the rental of typewriters for students, and that the petitioner would be eligible for such funding. In the petitioner's area, typewriters rent from \$10 to \$35 a week. A new typewriter could be purchased for \$130. The department admits that in the petitioner's case it would be far more cost-effective to purchase rather than to rent a typewriter.¹

As noted in prior fair hearing (Nos. 8674, 9027, and 9271), the Reach-up program is an entirely state-conceived, state-administered, and state-funded program. It is designed to provide counseling and financial assistance to ANFC recipients who voluntarily elect to engage in education or training designed to lessen or remove their dependence on welfare.

To date, the department has neither proposed nor promulgated any regulations regarding the administration of Reach-up. The only written guidelines are contained in ad

hoc "memos" that are issued from time to time by the department's state office and in a document called a "Support Services Matrix" issued to district offices. The Matrix sets out certain "expenditure limits" for the various types of support services offered through Reach-up.

The Matrix amount for "educational support" is \$250 per each twelve month period in the Reach-up program. The department admits, however, that district Reach-up workers are empowered to authorize spending for any individual Reach-up participant by two times the Matrix amount. In addition, the department's state office can in its discretion approve another two-times increase in the Matrix amount for individual participants. There is no question in the instant case that the purchase of a typewriter for the petitioner would be well under the petitioner's "Matrix limit".

There is no memo or written guideline that has been issued by the department concerning the ban on the purchase of typewriters. Apparently, it was a state office decision that was conveyed orally (by phone) to the district offices.

There is no evidence, however, that at least as of October, 1989, the policy prohibiting the purchase of typewriters has not been applied absolutely and uniformly throughout the state.

ORDER

The department's decision is reversed.

REASONS

The department's blanket "policy" of prohibiting the purchase of typewriters for secretarial students appears wholly arbitrary and capricious.² By the department's own admission, it cannot be justified on the basis of cost-effectiveness--secretarial students remain eligible to rent typewriters through Reach-up at a cost far greater than their purchase. Also, other educational supplies (e.g., books, lab supplies, etc.) are routinely covered. The department has not suggested a rationale that would begin to explain, much less justify, singling out one class of Reach-up participants--secretarial students--for such a ban on the purchase of one type of necessary educational equipment.

It appears the department attempts to administer the Reach-up program with a conscious "flexibility", and with an overall spirit of support and cooperation toward the program's participants. The department argues that the implementation of formal regulations would stifle the flexibility required to meet the particular needs of individual Reach-up participants. While such an administrative approach is laudable, perhaps even enlightened,³ serious due process and equal protection problems can (and do) arise when certain individuals are denied services without written guidelines upon which the department has relied.

In past cases, the hearing officer has recommended that if the department can establish that a denial of a certain

Reach-up service was justified economically, uniformly applied, and not patently unfair, that it should be upheld (see, e.g., Fair Hearings No. 9027 and 9271).⁴ In this case, however, the department has met only one of the above criteria--that of uniform applicability (at least since last October). By its own admission, the department's ban on the purchase of typewriters is cost-ineffective. Worst of all, however, it is inexplicable and unfair to single out one type of educational equipment for one type of student as being beyond the scope of Reach-up.

In view of the above, and in the absence of a regulation supporting the department's decision, the decision is reversed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

FOOTNOTES

¹At the hearing, held on February 9, 1990, the department assured the hearing officer that the petitioner would be furnished with a typewriter so that she could begin her next semester of classes.

²This does not mean that the department cannot, and should not, explore cheaper alternative means of obtaining necessary educational supplies (or any item or service) for Reach-up participants. In cases like this, however, when it has been established that cheaper alternatives do not exist, the department cannot arbitrarily foreclose individual types of otherwise-appropriate Reach-up support services.

³The hearing officer and the Board cannot help but note, however, that the department's position in this case appears directly contrary to what it claims is its philosophical approach to its administration of Reach-up.

⁴In those cases it was also noted that anyone aggrieved by the lack of written regulations or guidelines can pursue

remedies through the Vermont Administration Procedures Act, 3 V.S.A. § 801 et. seq., and that these remedies should be exhausted prior to a request for a fair hearing under 3 V.S.A. § 3091.

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